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18 UNITED STATES DISTRICT COURT

19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20 OAKLAND DIVISION

21 DR. JAMES M. SWANSON, an individual,

22 Case No. 4:12-cv-04579-PJH (KAW)

23 Plaintiff and Counterdefendant,

24 **ADMINISTRATIVE MOTION OF
PLAINTIFF DR. JAMES M.
SWANSON TO CHANGE TIME
(CIV. L.R. 6-3) AND FOR A
SCHEDULING ORDER**

25 vs.

26 ALZA CORPORATION, a corporation,

27 Defendant and Counterclaimant.

28 **INTRODUCTION**

29 ALZA filed a Motion for Summary Judgment on June 13, 2014 (Dkt. No. 170). On June
30 16, 2014, Dr. Swanson's lead counsel, Gerald P. Dodson, inquired if ALZA would be willing to
31 stipulate to continue the hearing date for its Motion for Summary Judgment to September 2014,
32 and calendar the briefing schedule from this date, citing a preliminary injunction evidentiary
33 hearing in Kansas at the end of June and a longstanding and unalterable medical procedure

1 scheduled for mid-July that requires both preparation and recovery time on his part. On June
 2 17, 2014, ALZA responded that it will not oppose any request by Plaintiff to re-set the hearing
 3 date (but not the briefing schedule) on ALZA's Motion for Summary Judgment from July 23rd
 4 to August 27th, conditioned upon Plaintiff's agreement to stay discovery pending the Court's
 5 resolution of that Motion. Dr. Swanson's counsel subsequently responded on June 17, 2014 that
 6 given Mr. Dodson's medical situation, such a [briefing] schedule would not work and that Dr.
 7 Swanson had no desire to stay discovery during such time. On June 19, 2014, the parties filed a
 8 Joint Case Management Statement (Dkt. No. 181) without reaching an agreement regarding the
 9 hearing date and briefing schedule.

10 Given Mr. Dodson's medical situation and ALZA's unwillingness to stipulate to a
 11 continuance of the hearing date and briefing schedule for its Motion for Summary Judgment,
 12 Dr. Swanson respectfully requests that the Court enter the below proposed schedule.

14 **ACTION REQUESTED**

16 Dr. Swanson requests that the following schedule be entered for briefing and hearing on
 17 ALZA's Motion for Summary Judgment.

| | |
|---|---|
| 18 August 27, 2014 | Plaintiff's Opposition |
| 19 September 3, 2014 | ALZA's Reply Brief |
| 20 September 10, 2014 | Hearing on ALZA's Motion for Summary Judgment |

REASONS SUPPORTING THE MOTION

Dr. Swanson's counsel, Mr. Gerald Dodson, suffers from a serious medical condition resulting from five cysts on Mr. Dodson's spine. Andrews Decl. ¶ 2; Fleming Decl. ¶ 2. The cysts cause significant pain, and pain medication has become ineffective over time due to tolerance. Dodson Decl. ¶¶ 9-13. The only treatment option is to surgically remove the cysts. Andrews Decl. ¶ 2; Fleming Decl. ¶ 2; Dodson Decl. ¶¶ 12-13. Surgery for the removal of the cysts is scheduled for July 14, 2014. *Id.* Post-surgery, Mr. Dodson will continue to experience pain and limited mobility for at least six weeks. Andrews Decl. ¶ 2; Fleming Decl. ¶ 2; Dodson Decl. ¶ 18. Thus, Mr. Dodson will require a six-week recovery period after the surgery during which he will not be able to work. *Id.*

Dr. Swanson's inventorship rights are not the only interests at issue in this case. The Regents of the University of California has a financial interest in the subject matter and outcome of this case, and the public has an interest in ensuring the fairness and efficiency of the patent system. If Mr. Dodson is unable to work on Plaintiff's opposition to ALZA's motion due to his medical condition, such an unfortunate outcome would work significant prejudice against Dr. Swanson's interests and the interests of the University of California. The public interest will also be harmed. According to P. Martin Simpson, managing counsel to the University of California, "the interests of the public in determining the proper inventorship on patents would be served by having Mr. Dodson actively oppose ALZA's Motion for Summary Judgment."

The date of the hearing on ALZA's Motion for Summary Judgment is scheduled for July 23, 2014 (Dkt. Nos. 170 & 175). Dr. Swanson requests that the hearing be postponed until September 10, 2014, with the briefing schedule recalculated with reference to the new hearing date. Such a modest seven-week extension of time will have a negligible impact on the overall schedule for this case.

CONCLUSION

Because the interests of Dr. Swanson, the University of California, and the public will be harmed by a denial of Dr. Swanson's request to continue the hearing date and briefing schedule and because such a modest continuance will have a negligible impact on the overall schedule for this case, the Court should grant this administrative motion to change time. A proposed order is attached.

Dated: June 23, 2014

/s/ *Gerald P. Dodson*

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